



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA-2013-0047, FMCSA-2014-0034]

Applications for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of applications for exemption.

SUMMARY: FMCSA announces its decision to deny the applications for exemption from its regulations submitted by David Muresan, Payne & Dolan, Inc., Zenith Tech, Inc., and Northeast Asphalt, Inc. FMCSA has analyzed the applications for exemption and public comments received on each, and rendered its decisions based upon the merits of each application.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Docket

You may read the applications for exemption, background documents, public comments and the Agency's letters of final determination in the dockets of these applications by going to www.regulations.gov, or to Room W12-140, DOT Building, 1200 New Jersey Ave. SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Background

FMCSA has authority under 49 U.S.C. 31315 and 31136(e) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs)(49 CFR part 350 et seq.). The Agency is required to publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)]. FMCSA must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request. FMCSA reviews the applications for exemption, safety analyses and public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** with the reasons for denying or granting the application [49 CFR 381.315(b) and (c)].

David Muresan [Docket FMCSA-2013-0047]

David Muresan is a long-haul CMV driver who believes the hours-of-service (HOS) rules (49 CFR part 395) of the FMCSRs require him to drive when he is sleepy. He believes that he could operate more safely if he could decide when he needs sleep. Mr. Muresan proposes that he be exempt from all the HOS rules and be subject to certain rules he has designed. The HOS rules generally require CMV drivers transporting property to obtain at least 10 consecutive hours off duty between workdays. Mr. Muresan proposes that he be permitted to operate at any time that he has

accumulated 10 hours off duty by any number of breaks of any length he chooses. Mr. Muresan also proposes that 24 consecutive hours at his residence would permit him to return to “reset” his driving “clock;” current rules require a minimum of 34 consecutive hours for such a restart. Mr. Muresan claims that, under his proposed rules, he would likely achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption. However, he does not provide data or explain how he reaches this conclusion. Mr. Muresan wants to determine when he is sufficiently rested to resume driving, but, as FMCSA has indicated in its HOS rulemakings, research indicates that individuals are not necessarily good judges of whether or not they are rested.

On December 17, 2013, FMCSA published notice of this application (78 FR 76392). None of the three comments received were supportive of the application. FMCSA concludes that Mr. Muresan has failed to explain how he would ensure that he can achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the HOS rules. A copy of the denial letter dated April 7, 2015, is included in the docket number referenced above.

Payne and Dolan, Inc., Zenith Tech, and Northeast Asphalt, Inc. [Docket FMCSA-2014-0034]

These three construction companies applied jointly for an exemption from § 395.3(a)(3)(ii), barring operation of a CMV by a driver if 8 hours have passed since the end of the driver’s last off duty or sleeper-berth period of at least 30 minutes. Their drivers operate CMVs in support of nighttime road repair and maintenance operations. The drivers deliver equipment and materials to work zones, spending an average of 2

hours per day behind the wheel operating a CMV. The companies state that their deliveries are often time sensitive; they cite asphalt as a material that must be delivered before its initial temperature drops appreciably. The companies allege that the mandatory 30-minute break unduly constrains their ability to deliver as circumstances dictate. They also state that the limited amount of time their CMV drivers spend behind the wheel, as well as their frequent breaks of less than 30 minutes, make them less susceptible to fatigue than CMV drivers who spend most of their workday behind the wheel.

On August 6, 2014, FMCSA published notice of this application (79 FR 45865). Comments in favor of the application and containing identical text were submitted by 438 individuals affiliated with the applicants; a comment in opposition to the application was also submitted. The FMCSA has reviewed the application and the public comments and determined that it would not be appropriate to grant the exemption. The Agency believes that minimal effort would be needed for these drivers to extend one of their frequent short breaks to 30 minutes. Absent a break of at least 30 minutes, FMCSA concludes that it would be unlikely that these drivers would achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)]. A copy of the denial letter dated January 26, 2015, is included in the docket number referenced above.

Issued on: June 16, 2015

Larry W. Minor,
Associate Administrator for Policy.

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